

Governance & Proxy Review

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Edited by Francis H. Byrd

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As We See It - Commentary from The Altman Group

The Altman Interview – Anne Sheehan, Director of Corporate Governance, California State Teachers’ Retirement System (CalSTRS)

Anne Sheehan manages the major corporate governance initiatives on behalf of the California State Teachers’ Retirement System, the second largest pension fund in the United States. Sheehan guides the day-to-day activities of an eight member staff responsible for the oversight of an activist investment management portfolio of \$3 billion and execution of approximately 8,000 proxy votes annually. Ms. Sheehan has nearly three decades of management and leadership experience in major policy positions at both the state and federal levels, involving the restructure and reorganizing of state government; and the analysis of unfunded pension and health care liabilities of cities, counties, and public agencies in California. Anne is a board member of the Council of Institutional Investors.

1. **F. H. Byrd:** Proxy Access may become a reality in 2011, for U.S. companies. What should boards, managements and their advisors anticipate from CalSTRS (and allied activist institutions)?

Anne Sheehan: CalSTRS has a history of focused relationships with boards of directors and that focus will continue whether the access proposal is adopted or not. In our view the board is the only legitimate representative of shareholders and although they do not run the company on a daily basis, they select who runs it, they decide on whether the appropriate amount of risk is being taken in one endeavor or another, they decide on its public persona, virtually all the things that make the securities of a company attractive to the market...

CalSTRS is currently focused on boards of directors at the companies in its portfolio; this takes in everything from the structure and operation of the board, including how the board is established, how well do the Nominating, Compensation, Risk and Audit committees function, what the qualifications the board is seeking from candidates, and how shareholders participate in the nomination process for directors. Some examples of

Governance News & Views from across the spectrum

>> Executive Compensation

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May 10th, Tesoro Incorporates Relative TSR Into Unusual LTI Plan

Katie Wagner discusses Tesoro’s use of relative and absolute TSR in crafting executive pay plans.

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AGENDA

May 10th, Pay-Risk Disclosures Go Beyond Mandate

Katie Wagner with an analysis of compensation risk disclosure in 2010 proxy statements.

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THE WALL STREET JOURNAL

May 8th, Occidental Petroleum Investors Balk at Executive Pay Practices

Erin White reports on Occidental management’s loss of a “Say on Pay” vote to an effort by Relational Investors and CalSTRS (California State Teachers’ Retirement System) to reduce CEO pay at the company.

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Bloomberg.com

May 6th, How Much Is a CEO Worth?

this are the tactical focused effort at flagged directors who were on the boards of failed companies like Washington Mutual, Lehman Brothers, and Merrill Lynch. In recognition of the enormous financial wreck that has impacted our pocketbooks, jobs, pension accounts, and investment accounts, we are asking companies today why they are still putting forth these candidates? Tell us why this person is the best candidate you could come up with to represent shareholder interests on the board of a company that we own stock in? This focus enables us to have a more in-depth discussion on issues such as majority voting, diversity on corporate boards, risk oversight, succession planning requirements for directors, and the like.

2. F.H. Byrd: As advisors to boards and management, The Altman Group has seen an evolution in the standards used by proxy advisory firms, institutional investors and governance commentators in making a determination on whether to issue a withhold vote recommendation or launch a vote NO campaign. What criteria will CalSTRS use in determining whether to withhold support or initiate a campaign (Vote NO or short slate) against incumbent directors at your portfolio companies?

Anne Sheehan: Specifically when casting votes on directors we are looking to make sure they are fulfilling their duty to us as shareholders. Our primary concern is always the health of the asset, the company and its long-term financial and economic sustainability. I can't see why the current CalSTRS guidelines on directors would change materially. When we withhold for directors now, we use criteria like attendance, conflicts, service on other companies during the time of a corporate bankruptcy, major litigation--such as the Bank of America case where it appears that shareholders were actively misled about the costs of the Merrill merger-- compensation policies, candidates being over-boarded or having Nominating committees that do not meet, failing to enact shareholder proposals that have received a majority vote and having a board that has less than two-thirds of its members as independent directors. We will continue to use these criteria for withhold/or vote no campaigns.

3. F.H. Byrd: Do you believe Proxy Access, in whatever form it is approved (SEC or federal law) will foster more frequent and substantive dialogue, or will it create difficulties for boards and companies in communicating with shareholders on issues such as risk and strategy? How are shareholders getting up to speed on these key issues so as to make the most efficient use their engagement with directors and management?

Anne Sheehan: Certainly, the enactment of access should foster more substantive dialogue between shareholders and companies, and between management and directors. I don't see that it complicates discussion on any of the issues including risk and strategy.

Jessica Silver-Greenberg and Alexis Leondis with an analysis of chief executive compensation and shareholder performance.

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May 4th, Shareholders Rebuke Motorola Over Pay Practices

Niraj Sheth and Joann S. Lublin report on investor pushback on CEO pay at Motorola.

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May 2010, Column: Executive Pay: Time for CEOs to Take a Stand

A.G. Lafley, the former chairman and chief executive officer of Procter & Gamble, comments on what CEOs and boards should do about creating a pay for performance culture.

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>>Global Dispatches



May 11th, Investors Buy Up Brazil

Jonathan Weathley interviews James Sinclair, managing partner at investment bank CFS Partners, on the industry sectors seeing more investor interest in Brazil.

Special FT report on Brazil infrastructure: <http://www.ft.com/reports/brazil-infrastructure-2010>

[> view video](#)

IRISHTIMES.COM

May 11th, Elderfield Criticizes 'Spectacular Failures of Corporate Governance'

Simon Carswell reports on comments on the

CalSTRS plans to use proxy access as a last resort, when all other engagement techniques have failed. As for shareholders being prepared, at CalSTRS, when we engage a company on any issue, we use a variety of resources, both internal and external to review the company. This means everything from information vendors, research vendors, investment managers, because we don't want to waste either the company's time or resources, or our own.

4. **F.H. Byrd:** Recent media stories have reported that CalSTRS and CalPERS, working with other investors, are in the process of developing a database of potential director nominee candidates for short slates and for submission to companies. What skill sets are you seeking from these potential candidates and how will you assure that these individuals meet (or exceed) the criteria specified by companies' boards of directors?

Anne Sheehan: We are working on establishing a database of independent director candidates and we are doing that for a few important reasons. One reason is that there is now demonstrated economic value from having a diverse board of directors and we believe that makes the composition of boards a shareholder value issue. Another reason is the necessity to expand the pool of qualified candidates. Almost 3,000 of the sitting directors on companies in the Russell 3000 are between the ages of 70 and 90, a lot of companies have retirement policies that typically go into effect at 72, and couple that with the adoption of majority voting standards by companies and this looks like a significant long-term shareholder value concern. Add to that the last three decades of market collapses, beginning with the 1987 crash, and we as long-term investors have to take the director pool seriously. In each of these major collapses, the one thing that is a constant is that these failures were cultural, related to the people that were serving on the boards and how they discharged their duties to shareholders. We can only have an effect on the cultural mind-set by expanding the pool. This is not a short-term goal and we realize that this will not be accomplished in one annual meeting season. As to qualifications, the SEC's recent disclosure rules requiring disclosures regarding director qualifications is going to be very valuable for shareholders because we should learn why the sitting directors are on the boards. Naturally, the qualifications are going to have to match the company's needs. We will put quality people in the database, many of whom will not have prior public company board service and we will do some screening to be sure that the qualifications that people put forth are true, but the final decision will still be made by shareholders when they vote. The nominating committees on these boards are going to be critical to this effort as well and in the final analysis, we are dealing with a human problem and there are no guarantees. There aren't any in the current environment and the existence of the CalSTRS/CalPERS data base is not going to produce any magical

underlying cause of bank and insurance failures by Matthew Elderfield, head of financial regulation at the Central Bank and Financial Services Authority of Ireland.

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May 10th, EU Turns to 'Nuclear Option' to Halt Euro Speculation

A discussion of the EU 750 bn Euro bailout package.

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May 10th, Gaining Global Recognition

Babu Das Augustine, Deputy Business Editor, interviews Eisa Kazim, CEO of the Dubai Financial Market (first organized stock exchange in the UAE) just ahead of its 10 year anniversary.

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May 9th, EU Preps Euro Fund to Fight 'Wolfpack,' Debt Crisis

James G. Neuger and Meera Louis discuss the hurried defense plans of European Union financial ministers in advance of the market openings in Asia.

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May 9th, Vice Financial Regulator to Launch Investor Relations in Singapore and Australia

The South Korean news agency reports that Kwon Hyouk-se, deputy chief of the Financial Services Commission, will launch investor relations events in Singapore and Australia this week to promote the nation's financial policies.

guarantees either.

F.H.Byrd: Thanks Anne, we appreciate your taking the time out for us?

The below commentary appeared in the Second Quarter issue of *Directors & Boards* magazine as part of a special issue examining the role of the board of directors in speaking for the company. Mr. Byrd's article appears along with opinions from a number of luminaries and thought-leaders in the corporate governance field. The complete article may be found at <http://www.directorsandboards.com/whospeaks.pdf>.

Directors & Boards: Who Speaks For The Board? - No More Hiding Behind Management's Voice
Francis H. Byrd, Managing Director, The Altman Group

Since the onset of the Great Recession, the critical question of who speaks for the board, or to what extent the board should speak, has become one of vital importance. The expectations facing directors from regulators, investors, and the business media may be misplaced, but they now represent a fact of life. The question now is not whether the board should speak, but who from the board should speak besides the CEO, and under what circumstances.

Ordinary circumstances such as earning releases, new product introductions, analyst conferences, and engagements with shareholders usually do not require the presence of a board member. Our experience at The Altman Group leads us to say that the party who should speak for the board depends on the answers to the following three questions:

- What Is the Nature of the Issue/Situation? Is the company in a weakened industry and has accepted a massive taxpayer financed bailout, or is it a question of convincing shareholders and proxy advisory firms that the firm's compensation program drives performance and does not incentivize risky business practices?
- How Does the Issue/Situation Need To Be Addressed? Would the board member need to appear before Congress and/or regulatory agencies to testify, or would participation in a conference with RiskMetrics or BlackRock be an appropriate course of action?
- Who Is the Audience(s) That Will Be/Is Being Addressed? Do the public markets, consumers, and regulators need reassurance about the company's viability, or are a group of vocal institutional investors perhaps asking for a review and report on the company's environmental or human rights policies?

Where public and investor confidence in management has been seriously shaken — for example, as in the present

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May 7th, Reliance Victory Could Deter Foreign Investors

Joe Leahy reports on the potential impact of Mukesh Ambani's victory on foreign investment in the oil and gas industry in India.

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The New York Times

May 7th, Risk Seen for Europe's Banks if Cuts Freeze Credit

Jack Ewing reports on the risk of a double-dip recession resulting from the debt crisis in Europe and European bank exposure to Portugal, Italy, Ireland and Greece.

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THE GLOBE AND MAIL

May 6th, Stronach Surrenders Control of Magna

Greg Keena reports on Frank Stronach, the largest shareholder at auto parts maker Magna, acquiescing to governance advocates in changing the company's share structure.

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May 6th, Xstrata Investors Register Discontent

William MacNamara discusses investor displeasure with Xstrata's chairman, Willy Strothotte.

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crisis at companies participating in a government bailout program — the role of a director speaking for the board can help demonstrate the board’s commitment to, and its involvement in, guiding the company through the rough patch. This represents a “big stage” example of board involvement that most companies are unlikely to ever experience.

More likely, a company may have a problem with proxy advisory firms, or activist shareholders or institutional investors advocating through the shareholder resolution process or short-slate candidacies, for the company to take a specific course of action to increase shareholder value. In these instances the involvement of a lead director (and/or committee chairs, if appropriate) can be extremely helpful in resolving investor concerns — or when necessary, defending the company’s strategy or executive compensation program — and removing from the discussion the appearance of management self-interest.

The bottom line is that the role of the public company board has changed forever. Directors can no longer remain hidden behind management and the CEO as the company’s key or sole spokesperson(s). There will be occasions in the life of a company when board members will need to step up to the microphone, at either a press conference or a teleconference. Directors, executive management, and their advisers should be prepared for this eventuality.

May 5th, Credit Rating Agencies: Innocent Culprits in Europe Debt Crisis?

Tang Danlu questions the role of the credit rating agencies in the European debt crisis.

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May 3rd, Desperate to Integrate and Focus on Growth

Elizabeth Rigby and Hannah Kuchler discuss the status of Kraft and Cadbury post-merger.

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April 30th, Redflex's US Play Puts On the Brakes

Ian McIlwarith discusses the role of shareholder activism at camera company Redflex.

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>>Proxy Contests/Battles for Control



May 11th, Pru and AIG in Talks on Restructuring AIA Sale

Francesco Guerrera and Helen Thomas report on the prospect of changes in the Prudential-AIA deal.

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May 10th, Icahn Boosts Stake in Motorola

Ritsuko Ando reports on Carl Icahn’s continued

interest in Motorola.

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DealBook

May 10th, Icahn and Lions Gate Duel Over Shareholders

DealBook discusses the effect of Icahn's raised bid on the battle with Lions Gate.

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May 10th, Peabody Trims Bid for Australia's Macarthur Coal

Peter Smith discusses the impact of a proposed resources tax on the battle for Macarthur Coal.

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May 8th, More Setbacks for Prudential's Thiam

Dana Cimilluca and Neil Shah examine the speedbumps for the Prudential purchase of American International Group's Asian assets.

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[>>Investor Action](#)

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May 12th, Massey Directors Opposed By Funds

Joann S. Lublin and Kris Maher report on a campaign by a coalition of state pension funds to deny a majority vote to three Massey directors.

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May 10th, Moody's Faces Legal and Regulatory Pitfalls

Brooke Masters with an analysis of the challenges facing Moody's and the other major credit rating agencies.

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May 9th, Prudential Wins FSA Backing for AIA Takeover

Zoe Wood reports on a deal between Prudential and the Financial Services Authority that would allow the insurer to pursue its deal to purchase AIA.

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May 8th, Moody's Says It Received Wells Notice from SEC

The cable business network reports on an SEC enforcement action against Moody's Investors' Services.

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May 7th, Goldman Stockholders Speak

Steve Gelsi talks with investor advocates after the Goldman Sachs annual meeting.

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May 7th, Immelt Attacks Backlash Against Bankers

Jeremy Lemer discusses comments from GE CEO Jeffery Immelt on the populist anger against Goldman Sachs and the investment banking industry.

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**May 7th, Alcatel CEO Verwaayen's
Credibility Tested by Losses**

Matthew Campbell discusses the impact of poor financial performance at the telecommunications equipment maker.

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**May 4th, U.S. Financial Reforms Pose
No Threat to Industry**

Nick Ferguson discusses polling of investors on the prospects of financial reforms of the U.S. market.

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>>[The Boardroom](#)



**May 2010/2nd Quarter, Who Speaks
For The Board?**

Editor James Kristie posed this question to 16 top corporate governance and public relations experts on the question of how, if at all, should the board communicate on behalf of the company. The Altman Group's Francis Byrd is one of the contributors for this special issue. See Byrd's commentary under this week's The Altman Interview

> read more



**May 2010, How to Choose the Right
Nonexecutive Board Leader**

The authors, Dennis Carey, vice chairman of Korn/Ferry International, and John Keller, senior client partner with Michael Patsalos-Fox, a director in McKinsey's New York office, discuss the evolution in the role of the lead or presiding

director, and the need for a formal succession plan for this position.

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May 10th, Investors Start to Make Their Voices Heard on Pay

Erin White discusses the implications of the “Say on Pay” votes at Motorola and Occidental Petroleum.

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AGENDA

May 10th, Delving Into Board Leader Succession

Amanda Gerut discusses a PriceWaterhouseCoopers survey on lead director succession.

[Link to survey](#)

> [read more](#)

guardian.co.uk

May 9th, Companies Don't Care About Investor Protests

Julia Finch provides commentary on shareholder anger and board responses.

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Bloomberg.com

May 7th, Goldman Investors Back Blankfein, Reject Split Role

Christine Harper reports on the fate of the split chairman/CEO proposal at the Goldman Sachs annual meeting.

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CFO.com

May 6th, Should CFOs Serve on Their

Own Boards?

Alix Stuart discusses a study by Bentley University professors Rani Hoitash and Jean Bedard, and Northeastern University professor Udi Hoitash (brother of Rani) that posits the benefits of companies having their own CFOs on their boards of directors.

Link to study

> read more



May 3rd, Lampert Admits Interim Status of Sears CEO 'weird'

Ben Klayman reports on Edward Lampert's comments after the Sears Holdings annual meeting.

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May 3rd, Sears Interim CEO Continues to Mark Time

Miguel Bustillo and Joann S. Lublin discuss the CEO role at the retailer.

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April 29th, BofA Board Picks Ex-DuPont CEO as Chairman

Dan Fitzpatrick and Joann S. Lublin report on the board leadership structure at Bank of America.

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April 22nd, Ursula Burns Launches Xerox Into the Future

Fortune's Geoff Colvin interviews Xerox CEO Ursula Burns.

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